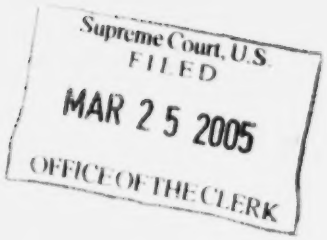

(2)

No. 04-913

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

STEVE A. GILBERT, RESPONDENT.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

As noted in the petition, this case presents the same question as that presented in *Illinois v. Caballes*, No. 03-923. Because *Caballes* had not been decided when the petition was filed, the petition requested that if the Illinois Supreme Court's judgment in *Caballes* were reversed, certiorari in this case should be granted and the judgment below should be vacated and remanded for reconsideration in light of this Court's decision in *Caballes*. Pet. 5.

This Court has since decided *Caballes*, holding that the Fourth Amendment does not require reasonable suspicion to justify using a drug-detection dog to sniff the exterior of a vehicle during a lawful traffic stop. *Illinois v. Caballes*, 125 S. Ct. 834, 837-838 (2005). This Court's decision in *Caballes* undermines the judgment below, which rested on the premise that reasonable suspicion was necessary to conduct such a sniff. Pet. App. 10a-13a. Accordingly, this matter should be GVR'd for reconsideration in light of *Caballes*.

Respondent offers only one reason to deny certiorari. According to respondent, this case is moot because the state trial court ordered the cause "dismissed and stricken" after the Illinois Supreme Court denied discretionary review. Resp. App. A-16. Respondent is incorrect. Although the state trial court struck the cause, this matter is not moot.

The statute of limitations for petitioner's alleged crime, possession of a controlled substance (720 ILCS 570/402(c)), is three years. See 720 ILCS 5/3-5(b). Respondent committed his offense on December 24, 1998 (Pet. App. 4a), and the three-year statute of limitations commenced on that day. See 720 ILCS 5/3-5(b). Charges were filed against respondent no later than December 29, 1998. Resp. App. A-2. Between that day

and January 26, 2005, when the cause was dismissed (Resp. App. A-16), the statute of limitations was tolled. See 720 ILCS 5/3-7(c). Thus, the statute of limitations on respondent's crime has not expired, and this matter is not moot.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment below should be vacated, and the case should remanded to the Appellate Court of Illinois for further consideration in light of *Illinois v. Caballes*, *supra*.

Respectfully submitted.

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